another sovereign. BYNKERSHOEK, DE FORO LEGATORUM, *cap. iv,* OPERA MINORA, ed. 1752, p. 448. See MARTENS ON LAW OF NATIONS, Bk. 4, ch. 5, s. 9. Hall takes the opposite view. HALL'S INT. LAW [Ed. 7], p. 211. Numerous authorities are collected in 20 MICH. L. REV. 407, 413. Both English and American cases have long recognized certain exceptions to the general rule of immunity. If the sovereign commences suit a defensive counter-claim is permitted; and the sovereign can be made a party if it is for his benefit. *Strousberg* v. *Republic of Costa Rica,* 44 L. T. R. 199; *French Republic* v. *Island Nav. Co.,* 263 Fed. 410; *Rowan* v. *Sharps' Rifle Mfg. Co.,* 29 Conn. 282; *Id.,* 31 Conn. 1. See also *Manning* v. *Nicaragua,* 14 How. Pr. 517; *Molina* v. *Comision Reculadora Del Mercado De Henequen,* 104 A. 450.

The Italian courts were probably the first to recognize the distinction between acts of a foreign state of a sovereign nature and those of a private nature. The *Pesaro* would have been decided the same way in an Italian, Egyptian, or Belgian court. In the Belgian court, however, there would have been judgment but no attachment—the judgment becoming a debt against the foreign nation. The French writers express views favorable to the distinction of the *Pesaro,* regarding the acts of a sovereign state. But the French cases are still in accord with the English rule of the *Porto Alexandre* when a foreign sovereign is involved. JOURNAL OF THE SOCIETY OF COMPARATIVE LEGISLATION (1920), Series III, Vol. II, p. 258; THE AM. JOURNAL OF INT. LAW (1919), Vol. 13, p. 12 *et seq.* Our Supreme Court has never decided the question of jurisdiction in such a case, but it has said that the question of jurisdiction under such circumstances is "debatable," and "It is not plain that there is an absence of jurisdiction." *In re Hussein Lutfi Bey,* 41 Sup Ct. 609. Now that "nationalization is in the air," the importance of the decision which our Supreme Court may be called to make is apparent. It would be carrying a legal fiction too far if we were to say that the immunity "by implied license" reasoning of the *Exchange* is applicable to a case where the foreign sovereign has engaged in an ordinary commercial venture. The argument of "convenience" is all on the side of the *Pesaro,* and it is submitted that "regal dignity" cannot be made to suffer by such a rule. We may well expect to see the doctrine of the *Pesaro* upheld.

G. S.

THE KANSAS DECLARATORY JUDGMENT ACT IN OPERATION.—Statutes of Kansas authorized cities of the first class to carry out works of internal improvement and provide for payment of the cost thereof by issuing bonds of the city running no longer than ten years and bearing interest not exceeding five per cent. When conditions following the war made the marketing of five per cent bonds impossible at a price anywhere near par, the legislature enacted a new law authorizing the issuance of internal improvement bonds at six per cent interest, but requiring every such bond to contain a privilege of prepayment after five years from date.

The city of Kansas City desired to undertake some internal improvements, but the money market had so far approached normal that five per cent bonds could be sold at a premium. The officers of the city did not know whether the effect of the new law was to repeal the old, thus making the prepayment privilege a necessary term in every bond to be issued, or whether it was an additional emergency statute applying only to bonds actually issued bearing interest above five per cent. They were anxious, if possible, to escape the prepayment restriction, for the privilege of short-time prepayment was shown to operate in the sale of bonds as a discount of one-half of one per cent, which would entail a heavy loss upon the city. The state officers, who were charged with the enforcement of the state law, were equally anxious to prevent the city from doing this if it was in fact illegal.

To ascertain the rights of the city in the premises the state applied to the district court for a declaration as to the rights of the city under the statutory restrictions imposed by the state, in an action brought against the city for that purpose, and the court promptly declared that the old law was not repealed and the city might issue five per cent bonds without inserting the provision for prepayment after five years.

Justice Burch, writing the opinion of the court, makes the following interesting comment upon the practical effectiveness of the new Declaratory Judgment law. He says:

"The proceedings in this case serve to illustrate the operation of the declaratory judgment act. Execution of the city's internal-improvement program placed it in this dilemma. If privilege of prepayment were not written in the bonds, the city and its officers were exposed to prosecution by the state for abuse of corporate power and violation of law, and the securities might not be marketable. If privilege of prepayment were written in the bonds, a heavy financial burden would be placed on the taxpayers, perhaps unnecessarily. Formerly, the city would have been compelled to choose one course or the other and abide the consequences. The law officers of the state could not give a binding interpretation of the statute, and, because of its ambiguity, could not consent to the course which the city claimed it was authorized to pursue. Therefore, a controversy existed justiciable under the declaratory judgment act. The action was commenced in the district court on February 7, 1922, and the defendant answered instanter. The cause was heard on the petition and answer and a stipulation that the pleadings stated the facts. The declaration of the district court was rendered on February 7, and the appeal was lodged in this court on February 10. This court was in session when the appeal was filed. Because of the public importance of the question involved, the cause was advanced for immediate hearing, and on February 10 it was submitted for final decision, on oral argument and briefs of counsel which accompanied the appeal papers. The city may now proceed with its improvements without any of the embarrassments and without any of the delay which would have been encountered if the remedy of declaration of right had not been available."

The case is *State of Kansas* v. *City of Kansas City*. The case was actually decided by the Supreme Court within two weeks after it was commenced in the district court. The opinion was filed February 24, 1922, but had not been published at the date of this writing. E. R. S.

PROOF OF CHARACTER—BURDEN OF PROOF ON MATTER OF JUSTIFICATION—ATTORNEY'S USE OF HIS OWN NOTES OF THE EVIDENCE IN ARGUMENT. PEOPLE v. WILLY, 133 N. E. 859 (ILL.).—The prosecution was for murder, and one of the contentions of defendant was that his character was that of a peaceful, law-abiding citizen, and evidence pro and con was introduced on this issue. The court of review held that character can be evidenced by general reputation only. This suggests an old contention, the history of which is well sketched by Professor Wigmore. WIGMORE ON EVIDENCE, Sec. 1981 *et seq.* The opinion in *R.* v. *Rowton*, Leigh & C. 520, is largely responsible for the propagation if not the initiation of the heresy, opposed not only to well-established authority but in violation of common sense, to the effect that character cannot be evidenced by the testimony of persons speaking out of intimate knowledge of the character to be evidenced. This heresy spread to this country, and the court doubtless speaks correctly when it says that the great weight of authority supports it. This doctrine is particularly pernicious in its application to the evidence of character introduced by the defendant as evidence of his innocence, since here it loses the principal prop in its support, namely, that it takes the person whose character is involved by "unfair surprise." The contrary doctrine has the better reason and more than casual authority in its support, and by reason of its "sweet reasonableness" should win general allegiance in the long run. See *Trial of Cowper et al.*, 13 HOW. ST. TRIALS, 1180; *Thomas Hardy's Trial*, 24 HOW. ST. TRIALS, 999; *People* v. *Wade*, 118 Calif. 672; *Stamper* v. *Griffin*, 12 Ga. 453; *Bowlus* v. *State*, 130 Ind. 227, and *State* v. *Sterrett*, 68 Iowa 180, among many others which might be cited.

The evidence in the case left no chance for doubt of the killing by defendant, but there was a sharp conflict on the question of whether the killing was justified. The court, while applying a modified form of it, affirmed the rule to be that the burden of proof on the question of justification is with the defendant. This again presents no new contention and illustrates anew what is sure to happen when courts brush aside logic and precedent in the interest of the individual. It may be quite true that many changes ought to be made in the rules of evidence, and something of an argument made even for plenary discretion in the trial court over all questions of admissibility. If, however, we are to have rules of evidence we should not cease to plead that they be consistent with our rules of substantive law and logical in their application. If we are going to say that one should not be found guilty until every reasonable doubt of his guilt has been removed, we must say that if there is a reasonable doubt of whether the defendant killed in self-defense he must be acquitted. And yet the